P. PATTO

v.

CHIEF POLICE OFFICER, PERAK & ORS.

SUPREME COURT, PULAU PINANG
ABDUL HAMID OMAR ACTING LP
MOHD. AZMI SCJ
EUSOFFE ABDOOLCADER SCJ
[CIVIL APPEAL NO. 186 OF 1986]
8 APRIL 1985

CIVIL PROCEDURE: *Applications for licences under s. 27(2) of Police Act 1967 to hold a solidarity dinner and a lion dance - Third respondent who is the licensing authority under the Act did not himself consider the applications - Applications considered and refused by 1st and 2nd respondents - 1st respondent who is the appellate authority to entertain an appeal against the refusal of a licence had purported to act at first instance - Effect.*

The appellant instituted an action to claim relief in connection with the applications he made to the 3rd respondent for licences under the provisions of s. 27(2) of the Police Act 1967 ("the Act") to hold a solidarity dinner and a lion dance in Gopeng on 30 August 1984 and the declarations he sought were to the effect that the 3rd respondent who is the licensing authority under the said section of the Act did not himself consider the applications, and that the applications were in fact considered and refused by the 1st and 2nd respondents who had no authority to do so. The High Court dismissed the appellant's claim with costs. The appellant appealed.

Held:

[1] The 3rd respondent as the licensing authority under the provisions of s. 27(2) of the Act had abdicated his functions by transmitting the applications for consideration and determination by the 1st and 2nd respondents, thereby fettering the discretion legislatively vested in him and which must be exercised by him, and him alone, in accordance with the provisions of subsection (2) of s. 27 of the Act.

[2] The 1st respondent is the appellate authority to entertain an appeal against the refusal of a license but he has in this case purported to act at first instance by considering and determining the original applications, thereby depriving the appellant of his statutory right of appeal.

[3] Section 27(7) of the Act specifically provides a minimum period of 48 hours after the refusal of a licence under the provisions of subsection (2) within which an appeal to the 1st respondent which must be in writing has to be made. In the circumstances it would have been absolutely impossible to have an appeal lodged and determined in time for the dinner and the lion dance scheduled to commence half-an-hour after receipt of the intimation of refusal from the 3rd respondent, and that too on a Saturday afternoon.

[Appeal allowed with costs.]

Cases referred to:

Simms Motor Units Ltd. v. Minister of Labour and National Service [1946] 2 All ER 201
Reg. v. Anderson, Ex parte Ipec-Air Pty Ltd. [1965] 113 CLR 177
Reg. v. Police Complaints Board, Ex parte Madden [1983] 1 WLR 447

Legislation referred to:
Police Act 1967, ss. 27(2), (7)

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - T. Selventhiranathan; SFC

JUDGMENT

Eusoffe Abdoolcader SCJ:

The appellant instituted an action to claim relief in connection with the applications he made to the third respondent for licences under the provisions of s. 27(2) of the Police Act 1967 ('the Act') to hold a solidarity dinner and a lion dance in Gopeng on 30 August 1984 and the declarations he seeks, shorn of tautology and concisely put, are to the effect that the third respondent who is the licensing authority under s. 27(2) of the Act did not himself consider his applications, that the applications were in fact considered and refused by the first and second respondents who had no authority to do so and that the fourth respondent wrongfully seized the loudspeaker equipment which was used that night; there is also an added claim for the return of this equipment and damages. Annuar bin Dato' Zainal Abidin J, after hearing evidence and submissions on both sides dismissed the appellant's claim with costs on 22 April 1985.

The inception of the events culminating in these proceedings was applications by the appellant who is the Deputy Secretary-General of the Democratic Action Party to the third respondent by two letters dated 10 August 1984 for licences to hold a Democratic Action Party solidarity dinner on 30 August 1984 from 6.00 p.m. until midnight at Dewan Wong Soa Sin See Yeh, Kopisan Baru, Gopeng and a lion dance in front of these premises earlier that day from 5.00 p.m. until 8.00 p.m. On 30 August 1984 at about 4.30 p.m. the appellant was handed a letter dated that very day intimating that his applications had been rejected after consideration by the first and second respondents. The lion dance was called off but the solidarity dinner proceeded nevertheless. At about 9.45 p.m. that night the fourth respondent, an Inspector of Police, who was in uniform, came with a few policemen and apparently intimated to the gathering that the function was not allowed, and he and his men then took away the equipment we have earlier mentioned.

Section 27(2) of the Act provides that any person intending to convene or collect any assembly or meeting or to form a procession in any public place shall before doing so apply to the Office-In-Charge of the Police District of that area for a licence for that purpose, and if such officer is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the security of the Federation or any part thereof or to excite a disturbance of the peace, he shall issue a licence in the prescribed form and define the conditions in regard thereto. Subsection (7) of s. 27 of the Act gives any person aggrieved by the refusal to issue a licence under subsection (2) the right to appeal in writing within forty-eight hours of such refusal to a Commissioner of Police or the Chief Police Officer whose decision thereon shall be final. It is therefore abundantly clear that the licensing authority in this case to whom application has to be made for a licence under s. 27(2) of the Act and who determines the grant or refusal of any such application would be the third respondent, and the first respondent would be the appellate authority to whom an appeal would lie against the refusal by the third respondent in accordance with the provisions of subsection (7) of that section.

There appears to be some antimony in the evidence adduced at the trial in that the appellant testified that he spoke to the third respondent's deputy, ASP Alwi, who was then Acting Officer-In-Charge of the Police District, over the telephone on 27 August 1984 to enquire with regard to his applications and was told that they had been forwarded to the Police Headquarters in Ipoh and he was asked to make enquiry thereat. ASP Alwi however gave evidence to the effect that he told the appellant when he rang that he had rejected both his applications and asked him to appeal to the first respondent against his decision. We do not think that much turns upon this conflict of evidence as what really matters and is crucial is the letter of 30 August 1984 which the appellant received at 4.30 p.m. on that day from ASP Alwi as the Deputy Officer-In-Charge of the Police District, Kampar informing him that his applications had been forwarded to the Perak Contingent Police Headquarters for consideration by the first and second respondents, and that after consideration both applications were refused.

It is manifestly evident from this reply of 30 August 1984 that the third respondent as the licensing authority under the provisions of s. 27(2) of the Act had abdicated his functions by transmitting the applications for consideration and determination and by the first and second respondents. ASP Alwi in giving evidence tried to explain his action by relying on what he referred to as departmental procedure in submitting the applications to the Contingent Police Headquarters. This is as lame an excuse as one can think of and we are left to ponder on the conundrum that would ensue as a result of this soi-disant departmental procedure if the licensing authority in the exercise of his discretion was amenable to the issue of a license but is vetoed by his superiors in the person of the first and second respondents, or contrariwise. He would then be acting under dictation and in consequence fettering the discretion legislatively vested in him and which must be exercised by him, and him alone, in accordance with the provisions of subsection (2) of s. 27 of the Act [*Simms Motor Units Ltd. v. Minister of Labour and National Service* [1946] 2 All ER 201; *Reg. v. Anderson, Ex parte Ipec-Air Pty. Ltd.* [1965] 113 CLR 177; *Reg. v. Police Complaints Board, Ex parte Madden* [1983] 1 WLR 447.

The other point is that the first respondent is the appellate authority to entertain an appeal against the refusal of a licence but he has in this case purported to act at first instance by considering and determining the original applications, thereby depriving the appellant of his statutory right of appeal. This whole thing is further compounded by the fact that the refusal of the applications made on 10 August 1984 was only intimated in writing to the appellant at 4.30 p.m. on 30 August 1984 itself, half-an-hour before the lion dance was scheduled to commence and an hour-and-a-half before the dinner. We need say no more than that this in any event by itself clearly and effectively curtailed the appellant's statutory right of appeal to the first respondent against the refusal of his applications. His right of appeal was rendered wholly nugatory as, first, there was no one to appeal to since the first respondent, the statutory appellate entity himself, had stepped into the arena at first instance by usurping the functions of the third respondent, and second, the time factor was such that even if there was no other impediment to an appeal to the first respondent, it would have been absolutely impossible to have an appeal lodged and determined in time for the dinner and the lion dance scheduled to commence half-an-hour after receipt of the intimation of refusal from the third respondent, and that too on a Saturday afternoon. We would stress that s. 27(7) of the Act specifically provides a minimum period of forty-eight hours after the refusal of a licence under the provisions of subsection (2) within which an appeal to the first respondent which must be in writing has to be made.

Mr. Karpal Singh for the appellant indicated that he was not in the circumstances proceeding with the question of the equipment seized by the fourth respondent and it is accordingly not necessary for us to deal with this aspect of the matter.

In the event and for the reasons we have given we allowed this appeal at the conclusion of argument with costs here and below, and declared that the refusal of the licences applied for by the appellant was made by the wrong authority, that the first respondent who is the appellate body had wrongly assumed authority in this regard, and that the intimation to the appellant of the refusal of his applications was made in a wholly unreasonable period of time so as to preclude any appeal by him against it. The deposit in Court lodged by way of security will be paid out to the appellant.

Also found at [1986] 2 CLJ 13